

TESTIMONY OF TY VICENTI
PRESIDENT OF THE JICARILLA APACHE NATION
TO THE NEW MEXICO STATE LEGISLATIVE COMMITTEE ON COMPACTS
IN SUPPORT OF
THE TRIBAL-STATE GAMING COMPACT BETWEEN
THE JICARILLA APACHE NATION AND THE STATE OF NEW MEXICO
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Chairman Sanchez, Vice-Chairwoman Clahchischillie, and members of the Committee, thank you for the opportunity to present the views of the Jicarilla Apache Nation regarding the Class III gaming compact we have negotiated with Governor Martinez and her staff.

THE JICARILLA APACHE NATION AND NEW MEXICO

I want to begin by providing a brief history of the Jicarilla Apache people. We have lived in New Mexico for centuries. We covered a territory that stretched from western New Mexico north to central Colorado and east to Oklahoma and all the way into the state of Texas. Along with other Native people, we helped shape the New Mexico that all of us in this Committee room call home today.

Our tribal government is headquartered in Dulce, and we serve more than 3,000 tribal members on the second largest reservation in the state. For decades, the Nation has helped lead this country's drive for energy independence through oil and gas production. We are one of the largest employers in northern New Mexico, and our employees contribute millions of dollars to the New Mexico economy. In addition, the Nation contributes millions of dollars in severance tax to the state not to mention the amounts we pay in gross receipts taxes whenever my People shop off tribal lands.

The Nation operates two Class III gaming facilities on our reservation: The Apache Nugget Casino, near Cuba, and the Wild Horse Casino in Dulce. Together, these two gaming facilities employ more than 200 hundred New Mexicans and generate revenue for the Nation, its businesses and the state of New Mexico in the form of revenue share.

FEDERAL LAW AND GAMING COMPACTS

In 1987, the United States Supreme Court recognized the inherent right of Indian tribes to both operate and regulate gaming on their own lands. That came about in the case of *California versus the Cabazon Band of Mission Indians*. The next year, Congress passed the Indian Gaming Regulatory Act (IGRA), which gave states the ability to help regulate some Indian gaming by

negotiating gaming compacts with Indian tribes. IGRA is the overarching law that governs gaming on tribal lands across the country.

Through IGRA, Congress allowed states to negotiate with tribes to determine how Class III gaming operations would be regulated. It placed limitations on what issues tribes and states could address through a gaming compact. It also prohibited states from using these compacts to impose taxes on tribal gaming operations or to regulate non-gaming activities. To ensure that these negotiated agreements with states don't go beyond those limits, Congress also required the Secretary of the Interior to review and approve every gaming compact.

In recent years, the Department of the Interior has taken a more aggressive stance when reviewing these agreements. The Department has struck down several agreements that require tribes to pay state governments too great a share of their gaming revenues, as well as, for attempting to regulate non-gaming activities, and for other violations of federal law. Most recently, the Department disapproved gaming compacts for the Pueblos of Jemez and Zuni. The two tribes attempted to sign onto to the 2007 gaming compact, currently in effect here in New Mexico.

THE 2001 AND 2015 COMPACTS

The Jicarilla Apache Nation's operates its gaming facilities under a 2001 compact with the State of New Mexico. That compact, as you know, expires on June 30th of this year. There are some positives in that agreement. For example, it doesn't limit the number of gaming facilities the Nation may operate on tribal lands. But it also has some drawbacks. It contains ambiguous language regarding "free play," and it also doesn't have language stringent enough to combat problem gambling.

You have been provided copies of the 2015 Compact. In it, you will see that it limits the Nation to a total of three gaming facilities on our existing reservation. The new agreement also resolves a longstanding dispute regarding how to calculate "free play", and it establishes a statewide system to help reduce problem gambling.

The 2015 Compact also contains the following major provisions:

- A requirement that the Nation share 2% of its first \$6 million in Net Win with the state. By the way, those figures will remain consistent throughout the life of the Compact. Should the Nation make anything above \$6 million, it will share 8.5% of its Net Win until 2018. And, by the time this compact expires in 2037, the Nation will be sharing 9.5% of its Net Win on amounts over \$6 million.¹ These payments are made in exchange for market exclusivity, and are based in part upon the Nation's limited share of New Mexico's gaming market.

¹ This is based upon the assumption that the Net Win at the Nation's gaming facilities does not exceed \$20 million per year. The Nation's annual Net Win rarely exceeds \$6 million.

- In addition there is a requirement that the Nation pay a \$75,000 fee annually to the State to cover the State's costs of enforcing the terms of the compact.
- Finally, there is a requirement that the Nation carry minimum levels of insurance and agree to submit to lawsuits intended to protect patrons at its gaming facilities.

While the Nation's Compact contains the same industry standards provisions as the agreements for the other tribes present at today's hearing, the Nation has yet to determine whether or not these provisions would be advantageous.

THE IMPORTANCE OF LEGISLATIVE APPROVAL OF THE NEGOTIATED AGREEMENT

The Nation and the Governor engaged in some very intense negotiations that covered several years. Both the Nation and the Governor pushed hard to address their respective priorities. Both sides conceded on important issues, and both sides stood firm on other provisions.

The Nation and the Governor engaged in these negotiations with an eye toward gaining the approval of the Department of the Interior. The negotiators for each side were well aware of the shifting legal landscape relating to gaming compacts. I made sure that the negotiators for the Nation worked closely with the Governor's team to ensure that we reached an agreement that complied with federal law.

I believe this agreement can and will withstand the Department of the Interior's scrutiny, and will gain approval under federal law.

The Nation respects the State's process for negotiating and approving these important agreements, and appreciates the Legislature's role. While the Nation would consider amendments offered by members of this Committee, I would also ask this Committee to consider the limitations imposed by federal law when proposing any amendments.

As I mentioned, the Nation's current gaming compact expires on June 30th, and it is critical that our agreement receives the approval of the Department of the Interior before that date. Having an approved agreement in place before that expiration date would avoid confusion regarding the status of the Nation's gaming operations. It will also prevent any potential conflict between our two sovereigns. But more important, having an approved gaming compact will ensure the continued operation of the Nation's gaming facilities and will also protect hundreds of jobs in northern New Mexico.

CONCLUSION

On behalf of the Jicarilla Apache Nation, I respectfully ask that the Committee approve the 2015 gaming compact between the Nation and the State of New Mexico. This agreement is good for

both the Jicarilla Apache Nation and the State, and will protect and preserve thousands of jobs across New Mexico. The Nation stands unified with its sister tribes present today and we ask that the 2015 compact move forward to the full legislative body without any changes.

Thank you for allowing me the opportunity to appear before you today. Along with my legal counsel, I would be happy to answer any questions that you may have.